

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**ADMIRALTY ISLAND FISHERIES,
INC., a Washington corporation, d/b/a
Aqua Star,**

Plaintiff,

v.

**MILLARD REFRIGERATED
SERVICES, INC., a Georgia
corporation, and DOES 1 to 50,
inclusive,**

Defendants.

CASE NO. 8:05CV541

**MEMORANDUM
AND ORDER**

**NATIONAL FIRE INSURANCE OF
HARTFORD as Subrogee of Suram
Trading Corporation,**

Plaintiff,

**CERTAIN UNDERWRITERS AT
LLOYD'S OF LONDON as Subrogee
of Icicle Seafoods, Inc., and**

**HARTFORD CASUALTY INSURANCE
COMPANY as Subrogee of Global
Fishing, Inc.,**

Intervening Plaintiffs,

v.

**MILLARD REFRIGERATED
SERVICES, INC.,**

Defendant.

CASE NO. 8:06CV421

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Plaintiff's Motion for Partial Summary Judgment (Filing No. 35) and the Defendant's Motion for Leave to Complete Necessary

Discovery Prior to Responding to Admiralty's Motion for Partial Summary Judgment. (Filing No. 48). On May 2, 2007, the Plaintiff, Admiralty Island Fisheries, Inc. ("Admiralty") filed its Motion for Partial Summary Judgment. (Filing No. 35). On May 9, 2007, the Defendant, Millard Refrigerated Services, Inc. ("Millard"), filed a Motion to Compel Discovery (Filing No. 47) and a Motion for Leave to Complete Necessary Discovery Prior to Responding to Admiralty's Motion for Summary Judgment. (Filing No. 48). On May 31, 2007, Judge Gossett granted Millard's Motion to Compel Discovery. (Filing No. 58). Specifically, Judge Gossett ordered Admiralty (1) to respond to Millard's discovery requests by June 15, 2007, in full compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure and (2) to identify its corporate representatives and provide firm dates for its representatives' depositions by June 7, 2007, in compliance with Rule 30(b)(6) of the Federal Rules of Civil Procedure.

In Millard's Motion for Leave to Respond to Admiralty's Motion for Partial Summary Judgment, Millard argues that Admiralty's Motion is not ripe because discovery has not been completed. Further, Millard states that Admiralty has not responded to written interrogatories, requests for production of documents, and that depositions have not been taken, which Millard needs to demonstrate that Admiralty is not entitled to partial summary judgment.

While summary judgment may be granted prior to the completion of discovery, if a party is not able to state essential facts in opposition to a motion for summary judgment, the court may deny the motion or order a continuance to permit depositions or other discovery. Fed. R. Civ. P. 56(f). Millard states that several depositions have not been taken and that these depositions are necessary to respond to Admiralty's motion. I find that Millard has not had enough time to complete discovery and that Admiralty's Motion

for Partial Summary Judgment was filed prematurely. Accordingly, Admiralty's Motion for Partial Summary Judgment is denied without prejudice. In accordance with the Progression Order (Filing No. 29), Admiralty may revive its Motion for Partial Summary Judgment no earlier than August 2, 2007, but not later than August 30, 2007. Finally, because I deny Admiralty's Motion for Partial Summary Judgment, Millard's Motion for Leave to respond to Admiralty's Motion for Partial Summary Judgment is denied as moot.

For these reasons,

IT IS ORDERED:

1. The Plaintiff's Motion for Partial Summary Judgment filed by Plaintiff Admiralty Island Fisheries, Inc. (Filing No. 35) is denied without prejudice to reassertion after August 2, 2007, and before August 30, 2007;
2. If Plaintiff Admiralty Island Fisheries chooses simply to revive its Motion for Partial Summary Judgment at a later time, rather than re-file revised or amended documents, it may file a single-page notice to that effect, asking the Court to revive the motion, brief, and evidence by reference to the document name and docket numbers; and
3. The Defendant's Motion for Leave to Complete Necessary Discovery prior to responding to Admiralty's Motion for Summary Judgment is denied as Moot.

Dated this 5th day of June, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge